

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Hotchkiss, et al.)	REQUEST FOR
Application No.:	10/710,866)	RECONSIDERATION OF
File Date:	August 9, 2004)	DECISION ON PETITION
Attorney Docket No.:	800760)	

Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Request for Reconsideration of the Decision on Petition Under 37 CFR 1.78(a)(3)

This is a request for reconsideration of the decision on the petition under 37 CFR 1.78(a)(3), filed on August 24, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

Statement of Facts

1. Petitioner Applicants' petition included the following:

- a. U.S. Patent Application No. 10/710,866 was filed on August 9, 2004, and incorporated by reference prior-filed U.S. Patent Application No. 10/249,784, filed on May 7, 2003 (Note: See paragraph 8, last sentence of U.S. Patent Application No. 10/710,866, as filed);
- b. Both applications included the common inventor Timothy T. Green, and were filed under 37 CFR § 1.53(b);
- c. A reference to the prior-filed copending application (10/249,784), as required under 35 U.S.C. § 120, was unintentionally omitted from the first sentence of the above-identified application;
- d. Applicants petitioned for a priority claim to the prior-filed U.S. Patent Application No. 10/249,784 in the above-identified copending U.S. Patent Application No. 10/710,866;

- e. Applicants submitted that the entire delay between the date that the claim was due under 37 CFR 1.78(a)(2)(ii) and the date that the claim was filed was unintentional;
- f. The specification of the above identified U.S. Patent Application No. 10/710,866 was amended to include a first sentence identifying the prior-filed U.S. Patent Application No. 10/249,784 by application number and file date; and
- g. A fee set forth under 37 CFR § 1.17(t) was included with the submittal.

2. The decision on petition included the following:

- a. The petition was dismissed because “(1) the reference required under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(ii) of the prior-filed application, unless previously submitted” was not satisfied; and
- b. The reference to add the above-noted, prior-filed applications in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications.

3. Analysis:

- a. The reference in Applicants’ petition to the amendment submitted to the specification of the above identified U.S. Patent Application No. 10/710,866 to include a first sentence identifying the prior-filed U.S. Patent Application No. 10/249,784 by application number and file date is correct.
- b. The submitted amendment to the first sentence of the specification included with the response to the Office Action mailed on June 4, 2007 also included some additional erroneous information regarding U.S. Patent Application No. 09/518,837.
- c. The submitted amendment to the first sentence of the specification included with the response to the Office Action mailed on June 4, 2007 should be amended to delete the erroneous information as follows:

This application is a continuation-in-part of U.S. Patent Application No.

10/249,784 by Green et al., filed on May 7, 2003, ~~which is a continuation in-~~

~~part of U.S. Patent Application No. 09/518,837 by Tuttle, filed on March 3,~~
~~2000, both applications incorporated herein by reference.~~

Summary

Based on the facts and analysis presented above, Petitioner Applicants request reconsideration and grant of the subject petition. Should there remain any unresolved issues, please contact Attorney for Petitioners listed below.

Respectfully Submitted,

April 4, 2008
Date

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